U.S. Department of Labor

Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400-N
Washington, D.C. 20001-8002

Date Issued: July 8, 1999

Case No.: 1997-INA-0190

In the Matter of:

ESTONIAN RELIEF COMMITTEE, INC.,
Employer,

on behalf of

MERIKE MAEKASK,
Alien.

Appearance: Krause & Associate, P.C.
Certifying Officer: Delores Dehaan, Region II

Before: Huddleston, Jarvis, and Neusner
Administrative Law Judges

RICHARD E. HUDDLESTON
Administrative Law Judge

DECISION AND ORDER

The above action arises upon the Employer's request for review pursuant to 20 C.F.R. § 656.26 (1991) of the United States Department of Labor Certifying Officer's ("CO") denial of a labor certification application. This application was submitted by the Employer on behalf of the above-named Alien pursuant to § 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) ("Act"), and Title 20, Part 656, of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under § 212(a)(5) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and, (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing

working conditions through the public employment service and by other reasonable means in order to make a good-faith test of U.S. worker availability.

We base our decision on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File,[1] and any written argument of the parties. 20 C.F.R. § 656.27(c).

Statement of the Case

This application for labor certification was filed by Estonian Relief Committee, Inc. for the position of Translator for Merike Maekask, Alien. The duties of the job were described as follows;

> Translate documents, including letters, confirmations, fax transmissions, brochures, articles, and advertisements to and from Estonian. Will also interpret spoken conversations to and from Estonian.

Employer required that applicants have two years of experience in the job offered and speak, read and write Estonian.

The Certifying Officer (CO) issued a Notice of Findings (NOF) proposing to deny certification on June 7, 1996 (AF 68-69). The CO questioned whether the offered job was full-time employment and instructed Employer to document that the position is permanent and full-time and that Employer conforms to unemployment regulations. Employer was specifically instructed to document the number of years it has been in operation, the unemployment number of the business, the names of its officers and all employees, the duties of each person, the remuneration paid to each person, the source of the funds, the amount of the funds from each source during each month of the last year. In addition, Employer was instructed to list fees charged for services, specify the fees for translation services, list the job duties of the translator, including the hourly schedule on a weekly and monthly basis and the time spent performing each duty and submit copies of payroll, unemployment records and invoices to users.

Employer, by counsel, submitted rebuttal on July 2, 1996 (AF 70-81). Employer's president stated that Employer has been in business since October 1941. Employer's unemployment number was provided with a copy of the last quarterly report. The president identified fourteen people as officers of the company. The president identified only one employee, a bookkeeper, stating that "... a host of volunteers... dedicate their time to preserve the ideals and goals of our organization." (AF 80). The president also provided a copy of its annual financial report to establish its source of revenue and a quarterly unemployment statement. The president stated that all translation services have been performed by volunteers and that it has proved to be an inefficient way of handling this vital duty; that a translator is needed all day long to communicate with Estonians who know little or no English, regarding money matters, newspaper articles, faxes, letters and brochures.

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[1] All further references to documents contained in the Appeal File will be noted as "AF *n*," where *n* represents the page number.

The CO issued a Final Determination denying certification on July 15, 1996 (AF 82-84). The CO stated that Employer had failed to document a specific breakdown of work performed, list the sources and amount of funds from each source in each month of last year, list fees charged for services including translation services, document the job duties of the translator and include an hourly schedule of the translator's duties on a weekly or monthly basis. The CO concluded that Employer had failed to document that it has a permanent full-time job as a translator available and had failed to document the source of its income.

Employer, by counsel, filed a request for reconsideration and appeal of the denial on August 19, 1996 (AF 85-112). The CO denied Employer's request for reconsideration on November 6, 1996 and forwarded the case to the Board of Alien Labor Certification Appeals.

DISCUSSION

The issues are whether the offered job is permanent full-time Employment and whether Employer complied with the CO's request for documentation.

Employer contends on appeal that the NOF was confusing. We disagree. The NOF sufficiently set forth the information requested by the CO in a clear and concise manner. The NOF is not required to be a detailed guide on how to achieve labor certification. *Miaofu Cao,* 94-INA-53 (March 14, 1996) (*en banc*) Moreover, the burden of proving that an employer is offering full-time employment is on the employer. *Gerata Systems America, Inc.*, 88-INA-344 (Dec. 16, 1988)(*en banc*). Rebuttal following the NOF is an employer's last chance to make its case. Therefore, the employer must perfect a record on rebuttal that is sufficient to establish that certification should be granted. Moreover, when the CO reasonably requests specific information to aid in the determination of whether a position is permanent and full-time, the employer must provide it. *Ramsinh K. Asher,* 93-INA-347 (Nov.8, 1994); *Collectors International, Ltd.*, 89-INA-133 (Dec. 14, 1989).

Here, the CO questioned whether the offered job is a permanent full-time position and requested that Employer provide specific factual data to aid in making the determination. The data requested appears reasonable and relevant. Especially relevant were the CO's request for the amount of fees received for translation services during the last year, a breakdown of the translator's job duties, the translator's hourly schedule on a weekly or monthly basis and the time spent on each duty (AF 68).

Instead of providing the requested data, Employer responded in rebuttal with general statements such as "(w)e have come to believe that it is imperative that someone be available at all times, if we wish to present a professional image. All day long there is a need to translate back and forth from Estonian..." (AF 80). These general unsupported statements do not provide the information requested in the NOF and do not document that the offered job is a permanent full-time position. *A.V. Restaurant,* 88-INA-330 (Nov.22, 1988). Accordingly, Employer failed to carry its burden of proof and certification was properly denied.

ORDER

The Certifying Officer's denial of labor certification is **AFFIRMED**.

For the Panel:

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RICHARD E. HUDDLESTON
Administrative Law Judge

NOTICE OF PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless, within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such a review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions for such review must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with the supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of a petition, the Board may order briefs.